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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,417	01/09/2004	Rainer Hammann	P-5917	6382
26253	7590	01/30/2006	EXAMINER	
DAVID W. HIGHET, VP AND CHIEF IP COUNSEL BECTON, DICKINSON AND COMPANY 1 BECTON DRIVE, MC 110 FRANKLIN LAKES, NJ 07417-1880			TONGUE, LAKIA J	
			ART UNIT	PAPER NUMBER
			1645	

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/753,417

Applicant(s)

HAMMANN ET AL.

Examiner

Lakia J. Tongue

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 13-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/21/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's response filed on October 18, 2005 is acknowledged. Claims 1-12 are pending and under examination. Claims 13-16 have been withdrawn.

The text of those sections of Title 35, U.S. Code not included in this action can be found in the prior Office Action.

Objections Withdrawn

1. In view of applicant's response, the objection to the specification is withdrawn.

Rejections Withdrawn

2. In view of applicant's response, the rejection of claims 1-12 under 35 U.S.C. 112, second paragraph, on page 3 is withdrawn.
3. In view of applicant's response, the rejection of claims 1 and 10-11 under 35 U.S.C. 102(e) (Chen et al), on page 4, paragraph 3 is withdrawn.
4. In view of applicant's response, the rejection of claims 1-6 under 35 U.S.C. 102(b) (Merlino et al), on page 5, paragraph 4 is withdrawn.

Rejections Maintained

5. The rejection of claims 1-12 under 35 U.S.C. 103(a) as being unpatentable over Merlino et al in view of Felten et al is maintained for the reasons set forth in the previous Office Action page 6, paragraph 5.

The rejection was on the ground that Merlino et al discloses that 126 staphylococcal isolates were examined. These included *S. aureus* among others (page 2378). Merlino et al further discloses that of the 114 *S. aureus* isolates tested on CHROMagar all grew and were identified chromogenically as *S. aureus* (page 2379). Lastly, Merlino et al disclose that methicillin resistance was confirmed by the detection of penicillin-binding protein 2a (page 2378). Merlino et al does not teach cephalosporins such as cefoxitin.

Felten, F. et al teaches a method of detecting methicillin-resistant *Staphylococcus aureus* (MRSA) using cefoxitin. Felten et al teach that 100% of the MRSA were detected using the method (abstract). It would be obvious at the time the invention was made to substitute the methicillin as taught by Merlino et al with the cefoxitin of Felten et al in the method of detecting MRSA because Felten et al teach that cefoxitin is more sensitive and specific for detection of MRSA (page 2769). It would have been expected barring, evidence to the contrary, that the cefoxitin would improve the detection of MRSA since the prior art teaches that cefoxitin is a suitable alternative for oxacillin in routine antibiotic susceptibility testing.

Claims 1-12 are drawn to a method of detecting antibiotic resistant microorganisms in a sample, comprising a) providing a chromogenic medium, said medium comprising at least one beta-lactam antibiotic, wherein said beta-lactam antibiotic is not oxacillin or methicillin; b) incubating said sample on or in said medium; and c) observing that resistant microorganisms exhibit growth and non-resistant microorganisms do not exhibit growth.

Applicant urges that a) one would not have been motivated to make the proposed modification or would have caused the artisan reasonably to expect that cefoxitin would have worked as well as methicillin in an MRSA assay using a chromogenic plate medium and b) Merlino et al demonstrated that an MRSA assay using oxacillin and methicillin incorporated into a chromogenic medium was unable to detect 70 of 100 community acquired MRSA strains.

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It is the examiner's position that table 2 shows detection of 100% of hospital acquired stains with methicillin or oxacillin. This indicated that there was growth thus detecting the hospital acquired MRSA. However, it should be noted that the claims do not exclude that the strains be hospital acquired or community acquired, but can encompass either. The rejection is therefore maintained and one would have a reasonable expectation of success with the combination of references.

Conclusion

6. **No claims are allowed.**

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakia J. Tongue whose telephone number is 571-272-2921. The examiner can normally be reached on Monday-Friday 7-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on 571-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).




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